HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Writ Petition No. 474 (S/S) 2004

Jai Singh Bhandari. ----Petitioner

Vs.

State of Uttaranchal through Secretary Home

And four others ---Respondents

Approved for reporting.

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Not approved for reporting.

Date of Decision 23 November 2005.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Judgment Reserved)

Writ Petition no. 474 (S/S) 2004

Jai Singh Bhandari S/o late Sunder Singh,
Village New Basti Gularbhoj,
P.O. Gularbhoj, District Udham Singh Nagar. ----Petitioner.

Vs.

1. State of Uttaranchal through Secretary Home,
2. Director General of Police-Uttaranchal, Dehradun,
3. Deputy Inspector General of Police,
   Kumoun Range, Nainital,
4. Superintendent of Police, Pithoragarh,
5. Reserve Inspector, Police Lines, Pithoragarh. ---Respondents.

Sri P.S. Adhikari, learned Sri. Counsel for the petitioner.
Learned Standing Counsel for respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri P.S. Adhikari, learned Sr. Counsel for the petitioner and learned Standing Counsel who accepts notices for the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ, order or direction in the nature of certiorari for quashing of the order dated 03.09.2003 passed by the Superintendent of Police, Pithoragarh and order dated 14th February 2004 passed by the Inspector General of Police, Kumoun Region, Nainital.

Brief facts of the case are that, the petitioner was Head Constable in the police department and at the relevant time was

posted at police lines, Pithoragarh. The petitioner was residing in a Govt. accommodation allotted to him in police lines, Pithoragarh, alongwith his wife Smt. Saraswati Devi, a daughter aged about 11 years and a son aged about 10 years. The mother of the petitioner was living at Udham Singh Nagar as she belongs to Udham Singh Nagar. Since the petitioner was serving in Pithoragarh district for more than last 13 years, his wife was not interested to go elsewhere; whereas the petitioner wanted to be transferred to Udham Singh Nagar to look after her old mother where she was residing. This cause developed dispute between the petitioner and his wife. The dispute developed to the extent that the petitioner had filed a petition under Section 13 of Hindu Marriage Act for divorce. The respondent no.5, Reserve Inspector, police lines, Pithoragarh also hails from the same village to which the wife of the petitioner belongs and he has been supporting the cause of petitioner's wife with the result neither the petitioner is being granted leave nor his application for transfer is being forwarded to the authorities by the respondent no. 5 and on the intervention of respondent no. 5, the Superintendent of Police, Pithoragarh has passed order deducting Rs. 2,300/- from the salary of the petitioner to be paid to his wife. The petitioner was so much harassed that he was compelled to submit his resignation from his services on 29.08.2003 with a condition that either he may be transferred to any other place or his resignation may be accepted. However, the authorities rejected the resignation of petitioner vide order dated 01.09.2003 and at the same time have not passed any order for transfer of the petitioner.

In the night of 01.09.2003, when the petitioner was in Guard Command Duty at police lines, Pithoragarh; a complaint was made by his wife to respondent no. 5 telephonically that the

petitioner entered to his quarter at 10.00 p.m. bearing his own service rifle and 30 cartridges, broken the house glasses, abusing his wife, threatening his wife as also the residents of the locality. Treating the act of petitioner as a threat to the peace to the police force as also to the residents, the Deputy Superintendent of Police was directed to make inquiry on 02.09.2003 who on the same evening i.e. on 02.09.2003 after making inquiry; submitted its report to the Superintendent of Police, Pithoragarh and on 03.09.2003 impugned dismissal order of petitioner was passed by the Superintendent of Police, Pithoragarh. Against the dismissal order dated 03.09.2003, the petitioner preferred appeal before the Inspector General of Police who also rejected the appeal vide its order dated 14.02.2004 which are the orders impugned in the present writ petition.

The petitioner has assailed the impugned orders on various grounds. Firstly, since the Reserve Inspector is the resident of the same village to which petitioner's wife belongs, has been supporting the cause of petitioner's wife. Not only this, he has manipulated in not granting leaves to the petitioner, he indulged in rejecting the resignation letter of the petitioner and making complaint on fictitious allegations in respect of the incident which said to have been taken place in the night of 01.09.2003. The action taken by the respondents is mala-fide. Submission of the petitioner is that he had gone to his quarter and since there was a dispute between the petitioner and his wife, hence false allegations have been made against the petitioner alleging that he threatened his wife and his neighbours. I do not find force in the submission made by learned counsel for the petitioner. The respondent no. 5 who is Reserve Inspector at police lines, Pithoragarh may belong to the village of petitioner's wife but this lone fact will not substantiate

the argument advanced by the learned counsel for the petitioner that the action taken by the respondents against the petitioner is mala-fide. A preliminary inquiry has been conducted by the Dy. S.P., punishment order has been passed by the S.P. and the appeal preferred by the petitioner has been rejected by the I.G. Police, but no allegations have been leveled against them.

The second ground on which the impugned orders have been attacked is that prior to passing of the dismissal order of the petitioner from service, no full-fledged enquiry was conducted. The impugned order has been passed under the Provision of Uttar Pradesh Police officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. Rule 4 of the aforesaid Rules provide for punishment which is quoted as under:-

> **"4. Punishment-** *(1) the following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a police officer, namely:-*
>
> *(a) Major Penalties-*
>
> *(i) Dismissal from service,*
>
> *(ii) Removal from service,*
>
> *(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.*
>
> *(b) Minor Penalties-*
>
> *(i) Withholding of promotion,*
>
> *(ii) Fine not exceeding one month's pay,*
>
> *(iii) Withholding of increment, including stoppage at an efficiency bar.*
>
> *(iv) Censure.*
>
> *(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments-*
>
> *(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).*

(ii) Punishment Drill not exceeding fifteen days,

(iii) Extra guard duty not exceeding fifteen days,

(iv) Deprivation of good conduct pay.

(3) In addition to the punishments mentioned in sub-rule (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:-

(i) Tent pitching;

(ii) Drain Digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

(iv) Repairing huts and butts and similar work in the lines;

(v) Cleaning Arms."

Rule-5 provides procedure for award of punishment. Rule 5(1) provides that the cases in which major punishments enumerated in Clause (a) of sub rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub rule (1) of Rule 14. Sub-rule (1) of Rule 14 provides that subject to the provisions contained in these Rules, the departmental proceedings in the cases referred to in sub-rule (1) of Rule 5 against the Police Officers may be conducted in accordance with the procedure laid down in Appendix-1. Appendix-I provides procedure relating to the conduct of departmental proceedings against Police Officer, which is quoted as under:-

Appendix-I

PROCEDURE RELATING TO THE CONDUCT OF PEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

"*Upon institution of a formal enquiry such Police Officer against whom the inquiry has been instituted shall be informed in writing of the grounds on which was proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form I appended to these Rules which shall be*

communicated to the charges Police Officer and which shall be so clear and precise as to give sufficient indication to the charged Police Officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged Police Officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish; provided that the Inquiry Officers may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the finding and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged Police Officer."

Learned counsel for the petitioner submits that the procedure prescribed under the Rules has not been followed in the case of the petitioner and, in fact, no enquiry was conducted in accordance with law. Learned counsel for the petitioner has also drawn my attention to Rule 8 of the Rules which provides dismissal and removal.

> *"Rule 8(1) of the Rules provides that no Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.*
>
> *"Rule 8(2) of the Rules provides that no Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:-*
>
> *Provided that this rule shall not apply-*
>
> *(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry or

(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry."

Learned Standing Counsel has submitted that it was practically not possible to hold an enquiry against the petitioner and, as such, under Rule 8 sub-rule 2(b) which provides that where the authority, empowered to dismiss or remove a person or to reduce him in rank, is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry or (c) where the Govt. is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry. So far Rule-8 sub-rule 2 sub-rule(c) is concerned where the Govt. is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry, the Police Officer can be dismissed or removed without conducting full-fledged enquiry. It is not recorded in the reason that the security of the State was involved. Further, where the security of the State is involved, the Govt. must satisfy itself that holding enquiry is not expedient. In the present case, there is no decision of the Govt. nor in the impugned order it is stated that security of the State was involved.

In the petitioner's case, for not holding enquiry, according to the learned counsel for the petitioner, it falls under Rule 8(2)(b) which says that if the competent authority is satisfied for the reasons to be recorded that it is not reasonably practicable to hold such enquiry, he may dismiss the Police Officer without holding enquiry. The reasons will have to be recorded by the dismissing authority that it is not reasonably

practicable to hold such enquiry. In the impugned order of dismissal, it is stated that the act of the petitioner is not good for police service and further since he was absconded, the enquiry cannot be held. Thus, if the delinquent official is absconded, the departmental proceedings can be held in absentia. Rule-16 of the Rules provides for conducting proceedings in absentia. Only the ground that the petitioner was absconded is not sufficient ground to hold that it is not reasonably practicable to hold enquiry against the petitioner.

Counsel for the petitioner has further submitted that he was not afforded any opportunity; hence the respondents have violated the Provisions of Article 311 of the Constitution of India. Further the petitioner was holding service rifle for which he was authorized by the competent authority and, as such, there was no violation of Arms Act. Since there was no full-fledged departmental enquiry against the petitioner, it is obvious that he was not afforded opportunity of hearing, I find force in the submission of the learned counsel for the petitioner that only on the ground that petitioner has been absconded, the punishing authority cannot take shelter of Rule 8(2)(b) of the Rules, which provides that if the dismissing authority is satisfied that it is not reasonably practicable to hold departmental proceedings against the delinquent police official, the punishing authority may dismiss the police official, as the Rule-16 of the Rules specifically provides for departmental proceedings in absentia. The Department could have conducted full-fledged enquiry against the petitioner even in absence of the petitioner, which the Department has not done. For the reason recorded above, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. The orders dated 03.09.2003 passed by the Superintendent of Police, Pithoragarh and order dated 14th February 2004 passed by the

Inspector General of Police, Kumoun Region, Nainital are hereby quashed. However it is open to the respondents to pass suitable orders, after conducting departmental enquiry in accordance with law. No order as to costs.

(M.M Ghildiyal, J.)

November 23, 2005:
NCM: